IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 11094 of 2007(U)

PETITIONER:

M/S.MATHA WOOD INDUSTRIES,
MULLASSERY, THRISSUR DISTRICT,
REPRESENTED BY IT'S PARTNER,
BENNY THOMSON.

BY ADV. SRI.BOBBY JOHN

RESPONDENTS:
----

1. **THE SALES TAX OFFICER,**
   CHAVAKKAD.

2. **THE INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, IRRINGALAKUDA.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.11094 OF 2007-U

Judgment

The petitioner has approached this Court, seeking a writ of mandamus to the 1st respondent to consider and pass orders on Ext.P3 rectification petition filed by it, praying to modify Ext.P1 assessment order. It also prays for a direction to the 2nd respondent not to initiate any recovery proceedings pursuant to Ext.P1 till the disposal of Ext.P3.

2. I heard the learned Government Pleader appearing for the respondents also. Ext.P3 is filed only on 27.03.2007. This Writ Petition is filed on 29.03.2007. This Court can issue a mandamus if only there is failure of duty from the part of the 1st respondent to consider and pass orders on Ext.P3. It is too early to accuse the said Officer of delay in dealing with Ext.P3. The petitioner should wait for a reasonable time, say, atleast two months, to raise the grievance of omission to perform duty from the part of the 1st respondent. So, the first prayer of the petitioner cannot be granted.

2. The filing of a rectification petition will not operate as stay. Therefore, the second prayer of the petitioner also cannot be granted. But, having regard to the facts of the case, the petitioner may pay the portion of the amount demanded under Ext.P2, which relates to Ext.P1, in six equal monthly instalments. The 1st instalment shall be paid on or before 16.04.2007. The balance instalments shall be paid on or before the 16th of the succeeding months. The petitioner can pursue Ext.P3 application, notwithstanding the direction to pay the amount in

instalments and if Ext.P3 is allowed, further payment will be subject to the rectification order and if it has paid any excess amount, the same shall be refunded or adjusted.

The Writ Petition is disposed of as above.

30.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

sta